

JOAN CHORNEY

IBLA 83-908

Decided March 12, 1984

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting automated simultaneous oil and gas lease application. W 85497, W 85617, W 85713, W 85726, and W 85844.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases:
Applications: Filing

An automated simultaneous oil and gas lease application Part B, Form 3112-6a, which does not reflect in the space designated "MARK SOCIAL SECURITY NUMBER" the same identification number used on the corresponding Part A, Form 3112-6, is not properly completed and must be deemed unacceptable.

APPEARANCES: James E. Nesland, Esq., Denver, Colorado, for Joan Chorney, appellant; Cranford O. Plyler III, Esq., for Alan Enberg, adverse party.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Joan Chorney appeals from the July 19, 1983, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting her simultaneous oil and gas lease application which had been selected with first priority for parcels WY-186, WY-306, WY-402, WY-416, and WY-534 of the May 1983 drawing (W 85497, W 85617, W 85713, W 85726, and W 85844, respectively). The number appearing in the social security number portion of Form 3112-6a (Part B) was that of her daughter, Jane Chorney, and did not match the corresponding number on her filed Form 3112-6 (Part A).

Chorney argues that no regulation existed as of her filing which required the inclusion of a correct social security number on the application and that imposing such a rule was erroneous and improper.

[1] We observe generally that under the Mineral Leasing Act, the Department is authorized to issue a noncompetitive oil and gas lease only to the first-qualified applicant. See Udall v. Tallman, 380 U.S. 1 (1965); 30 U.S.C. § 226(c) (1976). The Department has promulgated regulations which provide for the simultaneous filing of applications to be drawn for priority of consideration. 43 CFR Subpart 3112. "If the Secretary is to fulfill his

obligation to lease to the first-qualified applicant, as strict a compliance with the regulations as possible is necessary." Shearn v. Andrus, No. 77-1228, slip op. at 6 (10th Cir. Sept. 19, 1977), quoted in Sorensen v. Andrus, 456 F. Supp. 499, 502 (D. Wyo. 1978).

An application to lease under 43 CFR Subpart 3112 consists of a "simultaneous oil and gas lease application on a form approved by the Director, [BLM], completed, signed and filed pursuant to the regulations in this subpart." 43 CFR 3112.2-1(a) (1982) (emphasis added). ^{1/} Unless she has completed and filed a valid application, an applicant cannot be considered as "qualified." Fen F. Tzeng, 68 IBLA 381 (1982).

Chorney relies on Brick v. Andrus, 628 F.2d 213 (D.C. Cir. 1980), arguing that where an application does not comply with some nonregulation instruction of BLM, it may not be rejected solely on that basis. However, she has misinterpreted the Court of Appeal's holding as it relates to the situation here. The applicant in Brick appealed the Department's decision to reject his offer because he failed to enter his name on the entry card in the proper order indicated by the instructions on the card. The Court recognized that "the Secretary can properly adopt per se rules if he deems them useful in the administration of the program - even rules the application of which may at times yield results that appear unnecessarily harsh." Id. at 216. It reversed the Department's decision to reject the applicant's offer because there had been no notice of the rule which was applied and the rule had been inconsistently applied in the past. The Court's decision did not deter it from declaring,

The Secretary may, of course, hereafter insist that all entry cards in which the offeror's name is not entered in the proper order will be disqualified. But he must give participants in the leasing program notice of his intention to strictly enforce this requirement, and in addition, ensure that this rule is consistently applied.

Id. at 217. BLM's decision to reject appellant's application does not contravene the decision in Brick.

Beginning on January 1, 1982, the form approved by the Director, BLM, for use in the Wyoming State Office is the automated simultaneous oil and gas lease application consisting of Part A (Form 3112-6) and Part B (Form 3112-6a). 43 FR 55783 (Nov. 12, 1981). The automated form, which is machine readable, is designed to accommodate the automated processing of simultaneous oil and gas lease applications. The development of the automated process is a result of BLM's efforts to expedite the issuance of leases and lessen the paperwork burden. 46 FR 55783, 55784 (Nov. 12, 1981).

^{1/} The regulations cited in the text of the opinion are those in effect when Chorney's application was filed. 43 Subpart 3112 was amended in 48 FR 33648, 33678-80 (July 22, 1983), effective Aug. 22, 1983.

As noted above, the application form consists of two parts, A and B. Part A, which should be submitted only with the applicant's first filing under the automated process, enables BLM to record the applicant's name and address. Part B identifies all parcels which the applicant desires to lease and a separate Part B is submitted for each drawing. The identification number appearing on both parts is the coordinating feature between them. Although the number is designated "SOCIAL SECURITY NUMBER" on the form, it may be a person's social security number, a business entity's employer identification number, or a number assigned by BLM. The number entered on Part A is coordinated with all subsequently filed Parts B.

The instructions on Part A of automated Form 3112-6 provide: "If an applicant has no social security number or employer identification number or does not wish to disclose such a number, leave the Social Security Number block blank. BLM will assign an applicant number which must be used for all future filings." A notice appearing on both Part A and Part B reads, "The Paperwork Reduction Act of 1980 (44 U.S.C. 35) requires us to inform you that: This information is being collected to enter this application in an automated drawing. This information will be used to establish priority. The obligation to respond is required to obtain a benefit."

Without compliance with the directive that the identification number on Part B filings be consistent with the Part A filing on record, the application cannot be distinguished as distinctly that of the applicant. The rule requiring proper completion of the approved application form promotes the efficient administration of the simultaneous oil and gas leasing program in view of the number of applications submitted.

The present case can be distinguished from Brick in that notice of the rule at issue and the intent to strictly adhere to it was provided to the general public through publication in the Federal Register prior to appellant's filing of her application form. By notice in the Federal Register on November 12, 1981, 46 FR 55783, BLM established a requirement that all applications under the automated simultaneous drawing system must be completed and received in a condition that the authorized officer determines would not prevent automated processing. In a notice in the Federal Register on November 26, 1982, 47 FR 33508, BLM expounded upon this requirement as follows:

This notice specifies to the public that all simultaneous oil and gas lease applications must be properly completed in a manner that does not prevent automated processing. Effective immediately, failure to properly complete an application shall result in its rejection.

* * * Automated simultaneous oil and gas lease application forms 3112-6 and 3112-6a which are folded, spindled, or otherwise mutilated, which are incorrectly completed in any manner, which indicate an improper of incomplete Social Security Number, Employer Identification Number, BLM Applicant Number, or other identification number, which contain information on Part B

(Form 3112-6a) that does not correctly correspond to information on Part A (Form 3112-6), which contain entries that are obscured by incomplete erasure, stray marks, tape or other foreign substances, or which in any other way prevent fully automated processing will be considered unacceptable. [2] [Emphasis added.]

Departmental regulation, 43 CFR 3112.6-1(a) (1982), provides that an application will be rejected if not filed in accordance with 43 CFR 3112.2 (1982); 43 CFR 3112.2-1(g) (1982) requires that applications be "properly completed." It is well established that an automated simultaneous oil and gas lease application form Part B, Form 3112-6a, which does not reflect the same identification number used on the corresponding Part A, Form 3112-6, is not properly completed pursuant to the regulations and must be regarded as unacceptable.

This Board recently issued its decision en banc in the appeal styled Shaw Resources, Inc., 79 IBLA 153; 91 I.D. ___ (1984), in which a clear distinction is drawn between those deficient applications which, depending on the nature of the deficiency, are to be "rejected," treated as "unacceptable," or, notwithstanding the deficiency, received as "acceptable." There we noted that a deficiency of the sort which renders an application "unacceptable" requires the retention of a single \$75 filing fee only, with the balance of the filing fees associated with that application to be reimbursed to the applicant. The Board held that the mis-matching of the numbers on Part A with Part B of an application was among the deficiencies requiring that the application be deemed "unacceptable," rather than cause for rejection. Shaw Resources, Inc., supra, at 79 IBLA 176. The BLM decision in the instant case must be modified accordingly to allow partial refund of the filing fees.

2/ This requirement has now been incorporated in the Department's regulation of oil and gas leasing. The newly promulgated 43 CFR 3112.2-1(a), 48 FR 33678, see note 1 above, provides in pertinent part: "An application to lease under this subpart consists of a simultaneous oil and gas lease application on the form approved by the Director, completed, signed and filed pursuant to the instructions in the application form and to the regulations in this subpart." (Emphasis added).

Likewise, the new 43 CFR 3112.3(a), 48 FR 33679, provides: "Any Part B application form which, in the opinion of the authorized officer: * * * (2) Is received in an incomplete state or prepared in an improper manner; or (3) Is received in a condition that prevents its automated processing; * * * shall be returned to the remitter as unacceptable." The new 43 CFR 3112.2-1(e), 48 FR 33678, requires applicants to enter an identification number on the application, or be assigned one, and to use the same number for all filings.

The May 1983 listing of the lands to be offered for simultaneous filings also warned applicants that forms received indicating incomplete or improper identification numbers would be considered unacceptable.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Edward W. Stuebing
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

James L. Burski
Administrative Judge

